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**Building The  
Wireless Future™**

September 12, 1995

**CTIA**

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**Randall S. Coleman**  
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Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

**RECEIVED**

**SEP 12 1995**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

**Re: Ex Parte Presentation  
RM-8643**

Dear Mr. Caton:

On Tuesday, September 12, 1995, the Cellular Telecommunications Industry Association ("CTIA") represented by Messrs. Brian F. Fontes, Senior Vice President for Policy and Administration and Randall Coleman, Vice President of Regulatory Policy and Law; Pacific Bell Mobile Services, represented by Mr. Lyndon Daniels, President and CEO; and Mr. James P. Tuthill, General Counsel and External Affairs Vice President; and Cox Communications, represented by Mr. Bruce Crair, Vice President and General Manager; met with Commissioner James Quello; Commissioner Susan Ness; Ms. Lisa Smith, Legal Advisor to Commissioner Andrew Barrett; and the following members of the Wireless Telecommunications Bureau: Ms. Rosalind Allen, Chief, Commercial Wireless Division; Ms. Sally Novak, Chief, Legal Branch; Mr. Daniel Phythyon, Senior Legal Advisor, Office of the Bureau Chief; and Ms. Jackie Chorney, Legal Assistant, Office of the Bureau Chief; to discuss issues concerning PCS-Microwave relocation.

At the meeting, CTIA presented the attached document. Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and the attachment are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

  
Randall S. Coleman

Attachment

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BUILDING THE WIRELESS FUTURE

## **PCS MICROWAVE RELOCATION**

**September, 1995**

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## **PCS MICROWAVE RELOCATION**

**Today's Theme: Barriers to microwave relocation negotiations during the two-year voluntary negotiation period must be removed, including clarifying the obligations of the parties to negotiate in "good faith" and creating incentives for microwave incumbents to relocate during the voluntary negotiation period.**

- **What is at stake?**
  - **Interpretation of the current rules by some microwave incumbents is in conflict with the goal of rapid deployment of PCS.**
  - **Proposed clarifications and modifications.**
  - **Conclusion.**
-



## WHAT IS AT STAKE?

- **Timely introduction of broadband PCS to the public and additional competition in the wireless industry**
- **Ubiquitous, wide-area availability of PCS may be held hostage by a small group of bad actors**
- **Fair and equitable negotiation rules for both PCS licensees and microwave incumbents**
- **Future PCS auction revenues**
- **Administrative costs for adjudication of complaints and requests for extension of buildout deadlines**



## **FCC PRINCIPLES**

- **The Commission's transition plan for relocating microwave incumbents includes three broad principles:**
  - 1. relocate existing 2 GHz licensees in a manner most advantageous to the incumbents;**
  - 2. relocate existing 2 GHz licensees to higher bands with the least disruption to services offered to the public; and**
  - 3. foster development of and the introduction of emerging technologies, such as broadband PCS.**
- **However, current practice does not reflect adherence to these broad principles. Without clear and concise rules regarding relocation of the existing incumbents, the deployment of new, competitive wireless services is severely hampered.**



## **INCUMBENTS' INTERPRETATION OF CURRENT RULES IS IN CONFLICT WITH THE FCC'S PRINCIPLES**

- **The majority of microwave incumbents recognize the importance of the delivery of new wireless services to the public and are willing to negotiate. However:**
  - **Some incumbents argue that they are not required to enter into negotiations during the two-year voluntary negotiation period.**
  - **A smaller group of incumbents are entering into negotiations, but are making exorbitant and unreasonable demands on the PCS licensee in order to relocate.**
- **Under the current rules, incumbents have no incentive to negotiate and every incentive to stay in the 2 GHz band, while PCS licensees have no leverage. This imbalance favors the incumbents and results in requests for excessive fees and other unreasonable demands.**
- **The Commission should clarify that incumbents that do negotiate during the two-year voluntary period are subject to the same "good faith" requirement imposed during the one-year mandatory negotiation period.**
- **The current rules allow microwave incumbents to move back to their pre-existing bands if the new location does not meet their satisfaction. Since there are no objective criteria for determining whether the satisfaction of the incumbent users are met, PCS licensees will be left vulnerable to the demands of microwave incumbents.**



## **PROPOSED CLARIFICATIONS AND MODIFICATIONS**

- **Provide incentives for all parties to negotiate. This can be accomplished in a variety of ways:**
  - (1) clarify the rules so that parties who chose to negotiate must do so in “good faith,” regardless of whether they are negotiating during the two-year voluntary period or the one-year mandatory period. The “good faith” standard should include, but not be limited to, the absence of malice and the absence of a design to defraud or to seek unconscionable advantage;**
  - (2) provide PCS licensees with bargaining power, similar to the proposal adopted by the Canadian government where incumbents that have not reached agreement within the first two-year period will be responsible for all of their relocation costs; and**
  - (3) provide objective criteria that relocated microwave users must meet in order to return to their previous location.**
- **Penalize parties that fail to negotiate in “good faith.”**
- **Cease issuing new co-primary microwave licenses in the 2 GHz band. The continuation of such licensing is a breach of faith to the PCS license winners that have invested, to date, nearly \$8 billion to provide new wireless service to the public.**



## CONCLUSION

**To meet the FCC's broad policy goals of an orderly relocation process in order to provide additional competition in the wireless industry; permit ubiquitous, wide-area availability of PCS; ensure added revenues to the Treasury from future auction revenues; provide a timely introduction of broadband PCS; and reduce the administrative costs of adjudicating negotiation disputes and requests for extension of buildout deadlines:**

- **The bargaining power of microwave and PCS licensees must be equalized.**
- **The rules should create incentives for microwave incumbents to relocate during the voluntary negotiation period.**
- **The FCC should develop clear and concise rules regarding the requirement to negotiate in "good faith" during both the two-year voluntary negotiation period, and the one-year mandatory period.**
- **The FCC should establish objective criteria that the relocated microwave users must meet in order to return to their previous band location.**
- **Finally, the FCC should cease issuing new co-primary microwave licenses in the 2 GHz band.**